SUPREME COURT, U. S.

No. 101

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In the Supreme Court of the United States

OCTOBER TERM, 1965

FRANK DENIRO, JR., MICHAEL DENIRO, AND LOUIS DENIRO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1437

FRANK DENIRO, JR., MICHAEL DENIRO, AND LOUIS DENIRO, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners, having waived a jury trial (R. 2a),[1] were tried and convicted of attempting to defeat and evade the federal tax liability on the estate of their brother, and of conspiracy to do so and to obstruct an Internal Revenue Service investigation into that liability (Pet. 17a). Two of them, Frank and Michael DeNiro, were fined $1000 each and placed on two

[1] "R." references are to petitioners' appendix in the court below.

years' probation. The third, Louis DeNiro, was fined $3000 and sentenced to three years imprisonment, the first 90 days to be spent in confinement and the remainder on probation (Pet. 2a).

The district court expressly found (Pet. 13a-14a, Par. 14) that on the day of their brother's death, petitioners agreed to appropriate all of his assets to the exclusion of his heirs, two surviving children. Federal tax agents, while investigating Louis DeNiro's failure to file income tax returns for 1957-1959, told petitioners that federal law might require payment of estate taxes (Pet. 4a-5a, 14a-16a). Petitioners, by mutual agreement, concealed the existence of an estate and of estate tax liability by falsely representing to the investigating agents that their brother had left no assets and that they themselves had always been the owners of various assets and business enterprises which their brother had in fact owned, but through nominees (Pet. 14a-17a). In affirming the convictions, the court of appeals found (Pet. 6a) "abundant evidence" of guilt.

Although articulated in several ways, petitioners present a single contention: that the element of intent to violate the revenue laws was not present, and that any wrongful intent was only to defraud their brother's heirs. In fact, both the district court (Pet. 15a, Par. 25; Pet. 17a) and the court of appeals (Pet. 10a) have found specially that petitioners entertained a specific intent to commit the federal offenses, a finding fully supported by the evidence that petitioners, after a revenue agent informed them of obligations imposed by federal estate tax statutes, persisted in their

attempts to conceal their brother's assets from the government. It was irrelevant that the intent to violate federal law might have been only one of several purposes of their conspiracy. *Spies* v. *United States*, 317 U.S. 492, 499; cf. *Ingram* v. *United States*, 360 U.S. 672, 679-680.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1968.

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